Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Amendment of Section 90.629 | ) | RM - _____ |
| of the Commission's Rules | ) | |
| Concerning Extended | ) | |
| Implementation Schedules | ) | |

TO: The Commission

Petition For Rulemaking

Pursuant to Section 1.401 of the Commission's rules, the Utilities Telecommunications Council (UTC) hereby petitions the Commission to amend Section 90.629 of its rules regarding extended implementation schedules to provide additional time for the implementation of mobile systems governed by the section. In support of this petition, the following is shown.

## I. Introduction

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities (utilities). Approximately 2,000 utilities are members of UTC, ranging in size from large, combined electric-gas-water utilities which serve millions of customers, to small rural electric cooperatives and water districts serving only a few thousand customers each. All utilities depend on extremely reliable communications facilities to maintain on a day-to-day basis, and

to restore in emergencies, the public's essential electric, gas, and water services. Almost all utilities use land mobile systems, and many are constructing larger and more intricate systems, many of which employ trunking technology in wide area systems.

## II. Background

Section 90.629 of the Commission's rules currently provides that public safety, industrial/land transportation, business and general radio users applying for trunked or conventional mobile frequencies may request authorization to implement their stations over a period of up to three years. This three-year approach, also known as the "slow-growth" concept, was adopted in 1982 in recognition of the difficulties encountered by entities constructing larger, more complex systems and entities legally obligated to follow lengthy approval procedures for the expenditures and construction required for such systems. Section 90.629 requires applicants to include with their applications a justification showing that more time than the eight month or one year period typically allowed for construction and operation of land mobile stations is required to complete their systems. Applicants requiring more than three years to implement their systems must request a rule waiver.

Currently, Section 90.629 provides that to justify a three year implementation schedule, an applicant must show: (1) its

proposed system would serve at least two hundred mobile units and it would need more than one year to plan, purchase and construct the system; (2) the proposed system will require more than eight months to implement due to its purpose, size or complexity; (3) the proposed system is part of a coordinated wide area system which would require more than a year to plan, obtain approvals, and to finance and construct; or (4) the applicant is a local government agency and is required by law to follow a multi-year process to plan, fund and purchase the proposed system.

III. Proposed Rule

UTC requests that the Commission issue a Notice of Proposed Rulemaking proposing Section 90.629 of its rules be amended to include the language set forth below. The specific rule changes are discussed in subsequent sections.

**§90.629 Extended Implementation Schedules**

Applicants requesting frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories for either trunked or conventional operations may be authorized for periods in excess of normal construction requirements, based upon specific justifications in accordance with Subsection (a).

(a) A justification for an extended implementation period must include the implementation schedule (with milestones) for the construction and for the loading of the facility (e.g. construction of base stations and for placing mobiles in service) and must show either that:

(1) The proposed system will require longer than normal construction periods to place in operation because of its purpose, size or complexity; or

(2) The proposed system is to be part of a coordinated or integrated area-wide system which will require more than a normal construction period to plan, approve, fund, purchase and construct; or

(3) The applicant is a local governmental agency or utility which follows a multi-year cycle for planning, approval, funding and purchasing the proposed system;

(4) The applicant is a utility converting a conventional technology system to trunked technology operations.

(b) Authorizations under this Section are conditioned upon the licensee's compliance with the implementation schedule. If the licensee fails to meet the final implementation date authorized, and all channels are assigned in the system's geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate which allows the licensee to retain one channel for each 100 mobiles loaded. Conventional channels not loaded to 70 mobile units may be subject to shared use by the addition of other licensees. The licensee must submit a report to the Commission's Private Radio Bureau, Gettysburg, PA 17326 annually, showing the extent to which the authorized system has been implemented. A copy of the report must be submitted to the licensee's frequency advisory committee. Finder's preference procedures are applicable only at the final implementation date, not at the interim construction benchmarks.

IV. Proposed Construction Timetable Change

UTC requests the Commission to eliminate the fixed three-year time limitation in Section 90.629, and to allow applicants to request authorization for the amount of time they foresee will be required to place stations in operation as part of a larger system. Three years is often an inadequate time period and does not allow enough flexibility for entities properly to plan, budget and construct their systems, particularly wide area systems. Utilities and other types of applicants often operate under strict budget structures which require a long notice period for certain types and amounts of expenditures. Generally, a significant amount of time is needed to present the need for additional telecommunications expenditures to utility management and to obtain approval. In addition, it is often in the best interest of utilities to spread large expenditures over a number of years so as to avoid an increased cost to the consumers who, although they ultimately benefit from the telecommunications systems, also pay for them.

The proposed flexible-time approach would allow applicants more time to plan adequately, fund and coordinate new and more complex systems without the necessity of a rule waiver, provided an adequate justification is submitted to the Commission for the time period requested. There is no apparent policy reason to prohibit licensees from choosing and justifying the length of an extended implementation of mobile systems.

The elimination of a fixed time limitation for extended implementation under Section 90.629 would be consistent with the Commission's recent rulings regarding service rules for construction of nationwide systems in the 220-222 MHz band,[1/] FleetCall's digital SMR network[2/] and the Advanced Train Control Network.[3/] In each case, the Commission recognized the enormity of the logistics of planning and funding a multiple site system and chose to allow construction of these large systems to take place during a period in excess of three years.

## V. Proposed Justifications For Extended Implementation

UTC proposes that the FCC modify the existing justifications acceptable to obtain extended implementation authority. As an initial matter, UTC suggests that the FCC eliminate Section 90.629(a)(1) because the need to plan, approve, fund, purchase and construct is essentially included in the broad language of Subsection (a)(2) which describes a system's purpose, size or

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[1/] See Report and Order in Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, 6 FCC Rcd 2356 (1991).

[2/] In re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991), recon. den., 6 FCC Rcd 6989 (1991).

[3/] In re Waiver of Sections 90.621(d), 90.623(a), 90.629, 90.633 and 90.651(c) of the Commission's Rules to License Use of Six Conventional 900 MHz Frequency Pairs For An Advanced Train Control System, 3 FCC Rcd 427 (1988).

complexity as a justification for extended implementation. In addition, the 200 mobile figure stated in existing Subsection (a)(1) is not relevant. The number of mobiles is not necessarily indicative of a system's construction requirements.

Under UTC's proposed modifications, existing Subsection (a)(2) would become Subsection (a)(1). UTC proposes slight modifications of existing Subsections (a)(3) and (a)(4), which would become Subsections (a)(2) and (a)(3), respectively. New Subsection (a)(3) also specifically recognizes that utilities, as discussed above, need extended implementation schedules due to their prolonged budgeting and purchase approval procedures. UTC also requests that the FCC add a new Subsection (a)(4), which would permit utility applicants to use extended implementation schedules when they convert existing conventional systems to more efficient, trunked operations.

Three years is a particularly insufficient amount of time to implement a mobile system when a utility is installing a trunked system to replace an existing conventional system. Such a conversion requires extensive lead time and coordination. Utilities use mobile telecommunications for important day-to-day public interest functions, as well as for critical communications during emergency situations. As such, utility telecommunications systems should not experience the problems typical in a new system. As a result, a utility's conventional system must remain

operational while the trunked technology is added. A significant period of time might then be required until the entire trunked system is completely "de-bugged" and viable. Only then may the conventional system be made non-operational. UTC submits that the Commission should permit adequate time for completing a transition from conventional operations to trunking technology to encourage additional utility licensees to convert to the more efficient trunked operations, thereby increasing the efficient use of radio spectrum.

## VI. Loading Requirements

UTC requests the FCC to clarify that finder's preference procedures are applicable only to the final implementation date for a system authorized on an extended implementation schedule, and not to the interim construction benchmarks required by the FCC. In addition, UTC suggests the FCC modify loading criteria for trunked extended implementation systems to be consistent with trunked systems not authorized on an extended implementation schedule. Section 90.631(b), which outlines loading requirements for non-slow growth systems, only requires loading of 70 mobiles per channel for those systems. In contrast, Section 90.629(b) provides that if a licensee builds on an extended implementation schedule, it is expected to load the channels at a rate of 100 mobiles per channel. If it fails to meet its final implementation date, and the system is not loaded to 100 mobiles per channel and all channels are assigned in the system's

geographic area, authorization for trunked channels cancels automatically for any channels not loaded to 100 mobiles per channel.

UTC requests the FCC to specify in Section 90.629 that trunked systems built on an extended implementation schedule will be expected at the final implementation date to have loaded the channels to a level of 70 mobiles per channel, instead of 100 mobiles per channel. UTC does not request any change from the current provision that licensees of systems not fully loaded at the final date of an implementation period will be permitted to retain channels at a rate of one channel per 100 mobiles. The proposed rule change would ensure that loading at a level of 70 mobiles per channel is required for both channels constructed during normal construction periods and channels constructed on an extended implementation schedule.

## V. Conclusion

The size and intricacy of mobile systems is likely to continue to increase in the future. In further recognition of the multi-faceted complications that exist in implementing a mobile system, UTC requests the Commission to commence a rulemaking proceeding to modify Section 90.629 of its rules regarding extended implementation schedules to eliminate the fixed three-year time period for extended implementation. UTC proposes that applicants be permitted to request an extension of

normal construction periods as long as it is justified by the nature or complexity of the system.

In addition, UTC requests the Commission to modify the justifications acceptable for extended implementation and to specifically recognize that use of extended implementation schedules is particularly applicable to situations where a utility requires additional time to plan, budget, purchase and construct a system or is converting an existing conventional system to trunked operations.

WHEREFORE, the premises considered, the Utilities Telecommunications Council respectfully requests the Commission issue a Notice of Proposed Rulemaking consistent with the views expressed herein.

Respectfully submitted,

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